

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO**

EILENE ROMERO,

Plaintiff,

v.

No. CV 09–0817 LAM

**MICHAEL J. ASTRUE,
Commissioner of Social Security
Administration,**

Defendant.

ORDER GRANTING PLAINTIFF’S MOTION FOR EAJA FEES

THIS MATTER is before the Court on Plaintiff’s *Motion for Award of Attorney’s Fees Pursuant to the Equal Access to Justice Act 28 U.S.C. §2412* (Doc. 23) and accompanying *Affidavit* (Doc. 23-1) (hereinafter collectively, “*Motion*”). The Court has considered the *Motion* as well as Defendant’s *Response to Plaintiff’s Motion for Award of Attorney’s Fee* (Doc. 24) (hereinafter, “*Response*”), the record in this case, and the relevant law. Defendant has no objection to the *Motion*, and the Court, therefore, will **GRANT** the *Motion*.

IT IS THEREFORE HEREBY ORDERED that Plaintiff’s *Motion for Award of Attorney’s Fees Pursuant to the Equal Access to Justice Act 28 U.S.C. §2412* (Doc. 23) is **GRANTED**, and Plaintiff Eilene Romero is awarded attorney’s fees in the amount of **\$6,996.10** pursuant to the Equal Access to Justice Act, 28 U.S.C. § 2412, and in accordance with *Manning v. Astrue*, 510 F.3d 1246, 1249–55 (10th Cir. 2007).

IT IS FURTHER ORDERED that if Plaintiff’s counsel is ultimately granted attorney fees pursuant to 42 U.S.C. § 406(b) of the Social Security Act, he shall refund the smaller award to Plaintiff pursuant to *Gisbrecht v. Barnhart*, 535 U.S. 789, 796 (2002) (“Congress harmonized fees

payable by the Government under EAJA with fees payable under § 406(b) out of the claimant's past-due Social Security benefits in this manner: Fee awards may be made under both prescriptions, but the claimant's attorney must 'refun[d] to the claimant the amount of the smaller fee.'" (citation omitted)).

IT IS SO ORDERED.



LOURDES A. MARTÍNEZ
UNITED STATES MAGISTRATE JUDGE
Presiding by Consent